

**Letter of Findings: 65-20200193
Indiana Overweight Proposed Assessment
For the Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier provided sufficient evidence that it should not be assessed the full penalty for not holding an oversize/overweight permit.

ISSUE

I. Motor Vehicles - Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment of oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana based trucking company. On June 10, 2019, the Indiana State Police ("ISP") report showed that Taxpayer's commercial motor vehicle was overweight on the tandems and over the gross permitted weight. As a result, the Department issued Taxpayer a proposed assessment for being overweight in the form of a "No Permit Civil Penalty." Taxpayer protested the assessment of the penalty. The Department held an administrative hearing, and this Letter of Findings results. Further facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

Taxpayer was hauling sheet steel on an Indiana highway. The ISP report showed that Taxpayer was transporting a load over the statutorily allowed gross total weight in violation of IC § 9-20-4-1. ISP allowed Taxpayer to adjust the weight over the axels during the traffic stop. ISP reported that Taxpayer weighed 81,560 pounds, which is 1,560 pounds over the 80,000 limit. Taxpayer claims they were acting in an emergency situation and did not obtain a permit.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport

operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These "listed taxes" are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Taxpayer a "No Permit Civil Penalty." According to the ISP report, Taxpayer transported sheet steel that was more than the amount allowed under IC § 9-20-4-1. Taxpayer conceded that they failed to obtain a permit, but maintain they believed the load was under the statutorily permitted weight.

The Department imposed a civil penalty in accordance with IC § 9-20-18-14.5 because Taxpayer failed to obtain the required permit under IC Art. 9-20. Taxpayer argues that its actual weight was only 1,560 pounds over the statutorily permitted weight and they did not intend to be overweight. Taxpayer claims the reasons for being overweight were not entirely their fault. Taxpayer was using a trailer he rarely uses because he needed to supply product for those effected by tornados. Additionally, the vendor of the sheet steel loads the trucks. Each piece of steel has a bar code on it that the vendor scans before loading. The vendor's computerized system totals the weight. Truck drivers are not allowed in the facility when the trailer is being loaded. Taxpayer believed he was under the permitted level when he left the facility.

First, the Department notes that Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. This allows the Department to provide Taxpayer a route safe for transport. Second, IC § 9-20-18-14.5 provides that a civil penalty issued by the Department under IC Art. 9-20 is (1) in addition to and separate from any other civil penalties issued under Titles 8 and 9 and (2) in addition to any fines imposed by a court. In this case, Taxpayer failed to obtain a permit before transporting cargo; therefore, it is appropriate for Taxpayer to receive a No Permit Civil Penalty.

However, the Department understands Taxpayer's position that it relied on the vendor loading, and may reduce the Permit Violation Civil Penalty amount. In addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized by its statutory discretion and this Letter of Finding.

FINDING

Taxpayer's protest is sustained in part and denied in part. Sustained to the extent that the initially assessed amount is not due, but denied to the extent that there is still a penalty due.

June 23, 2020

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